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CHINA FREE PRESS
(erroneously sued herein as “China Free Press
doing business as Boxun News”)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ZHANG ZIYI, an individual,
Plaintiff,

vs.

CHINA FREE PRESS, a North
Carolina non-profit corporation
doing business as BOXUN NEWS;
WEICAN NULL MENG, an
individual known as WATSON
MENG and also WEICAN
“WATSON” MENG; and DOES 1-
25, inclusive,
Defendants.

Case No. CV 12-5216-DMG (PLA)

Assigned to the Hon. Dolly M. Gee

**[PROPOSED] ORDER GRANTING
SPECIAL MOTION OF CHINA
FREE PRESS TO STRIKE
PLAINTIFF’S COMPLAINT**

Hearing Date: October 12, 2012

Courtroom: 7

Time: 9:30 a.m.

[Lodged with Defendant’s Special
Motion to Strike Plaintiff’s Complaint,
and the Declarations of James
Rosenfeld, Michael Goettig and
Weican “Watson” Meng with Exhibits
A Through C]

Action Filed: June 14, 2012

On October 12, 2012, Defendant CHINA FREE PRESS's ("CFP") Special Motion To Strike Plaintiff's Complaint came on for hearing in Courtroom 7 before the Honorable Dolly M. Gee. Having reviewed and considered the motion and all other papers submitted and having heard the arguments of the parties, if any, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT** CFP's Special Motion To Strike Plaintiff's Complaint is **GRANTED** in its entirety.

The Court finds that:

Because Plaintiff's claims against CFP for libel *per se*, false light invasion of privacy, intentional and negligent interference with prospective economic advantage, and unlawful business practices in violation of California Business and Professions Code Section 17200, *et seq.* arise from "conduct in furtherance of the exercise of . . . the constitutional right of free speech in connection with a public issue or an issue of public interest," all of the claims are subject to a special motion to strike under California Code of Civil Procedure Section 425.16. Consequently, Plaintiff has the burden of demonstrating a probability that she will prevail on each of the claims she asserts. *See* Cal. Code Civ. Proc. § 425.16(b)(1). Plaintiff has not met her burden for each of the following separate and independent reasons:

1. Plaintiff's claims against CFP are barred by Section 230 of the Communications Decency Act, 47 U.S.C. § 230, which immunizes internet service providers from claims that seek to hold them liable as the publisher or distributor of third party content. Section 230 requires that "(1) the defendant be a provider or user of an interactive computer service; (2) the cause of action treats the defendant as a publisher or speaker of information; and (3) the information at issue be provided by another information content provider." *Gentry v. eBay, Inc.*, 99 Cal. App. 4th 816, 830, 121 Cal. Rptr. 2d 703 (2002). CFP meets each of these requirements:

a. CFP is a provider of an interactive computer service. An "interactive computer service" is "any information service, system, or access

1 software provider that provides or enables computer access by multiple users
 2 to a computer server, including specifically a service or system that provides
 3 access to the Internet....” 47 U.S.C. § 230(f)(2). “[C]ourts have ... adopt[ed]
 4 a relatively expansive definition of ‘interactive computer service.’” *Batzel v.*
 5 *Smith*, 333 F.3d 1018, 1028-30 (9th Cir. 2003). CFP is an information service
 6 that “provides or enables computer access by multiple users to a computer
 7 server.” 47 U.S.C. § 230(f)(2).

8 b. Plaintiff seeks to treat CFP as the publisher or speaker of content
 9 provided by a third party – here, the Boxun News website. *See* 47 U.S.C.
 10 §§ 230(c)(1), (e)(3). “[W]hat matters is not the name of the cause of action
 11 ... [but] whether [it] inherently requires the court to treat the defendant as the
 12 ‘publisher or speaker’ of content provided by another.” *Barnes v. Yahoo!,*
 13 *Inc.*, 570 F.3d 1096, 1101-02 (9th Cir. 2009). The Complaint treats CFP as
 14 the publisher of the content in question, and seeks to hold it liable for
 15 defamation and other torts based on that content.

16 c. CFP is not the “information content provider” of the content in
 17 question. An “information content provider” is “any person or entity that is
 18 responsible, in whole or in part, for the creation or development of
 19 information provided through the Internet or any other interactive computer
 20 service.” 47 U.S.C. § 230(f)(3). Courts have adopted a “restrictive definition
 21 of ‘information content provider.’” *Carafano v. Metrosplash.com, Inc.*, 339
 22 F.3d 1119, 1123 (9th Cir. 2003). A service provider does not become a
 23 content provider merely by making other entities’ content available. *See, e.g.,*
 24 *Parisi v. Sinclair*, 774 F. Supp. 2d 310, 318-21 (D.D.C. 2011) (Barnes & Noble
 25 is internet service provider, not information content provider, of book
 26 descriptions posted on website); *Chicago Lawyers’ Committee for Civil Rights*
 27 *Under the Law, Inc. v. Craigslist, Inc.*, 461 F. Supp. 2d 681, 698-99 (N.D. Ill.

2006) (Craigslist is not an information content provider of discriminatory advertisements on its site); *Corbis Corp. v. Amazon.com, Inc.*, 351 F. Supp. 2d 1090, 1117 (W.D. Wash. 2004) (Amazon is not an information content provider of content posted by third-party vendors). Since CFP made the content available on its servers without reviewing, selecting or editing it, CFP is not an information content provider of that content.

2. Plaintiff has not established that CFP is the “alter ego” of defendant Weican Null Meng. Although Meng is a member of CFP’s Board of Directors, such membership alone is insufficient to establish that CFP is Meng’s alter ego.

3. Plaintiff has not established that CFP is the “alter ego” of Yeeka, the owner and publisher of Boxun News. CFP has presented evidence that the two corporations have separate accounts, books, offices, personnel, operations and purposes, and are separately controlled and separately financed. Although Meng serves on the board of directors for both CFP and Yeeka, this alone is insufficient to show the presence of alter ego liability. *See, e.g., Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1135 (9th Cir. 2003); *Zero Motorcycles, Inc. v. Pirelli Tyre S.p.A.*, 802 F. Supp. 2d 1078, 1094 (N.D. Cal. 2011).

4. Plaintiff has not proved that CFP acted with actual malice. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 271-72, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964). The actual malice standard is a constitutional requirement intended to encourage “uninhibited, robust, and wide-open” debate on public issues, *id.* at 270, and requires a public-figure plaintiff to prove that the defendant published a false statement “with ‘knowledge that it was false or with reckless disregard of whether it was false or not.’” *Masson v. New Yorker*, 501 U.S. 496, 510, 111 S. Ct. 2419, 115 L. Ed. 2d 447 (1991) (citation omitted). The First Amendment further requires that a plaintiff prove actual malice by “clear and convincing” evidence. *Anderson v.*

1 *Liberty Lobby, Inc.*, 477 U.S. 242, 255-57, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).
 2 The evidence must “be such as to command the unhesitating assent of every
 3 reasonable mind.” *Beilenson v. Superior Court*, 44 Cal. App. 4th 944, 950, 52 Cal.
 4 Rptr. 2d 357 (1996). A plaintiff opposing a special motion to strike must satisfy this
 5 clear-and-convincing-evidence standard. *See, e.g., Rosenaur v. Scherer*, 88 Cal.
 6 App. 4th 260, 275-78, 105 Cal. Rptr. 2d 674 (2001); *Sipple v. Foundation For Nat.*
 7 *Progress*, 71 Cal. App. 4th 226, 247, 83 Cal. Rptr. 2d 677 (1999); *Bradbury v.*
 8 *Superior Court*, 49 Cal. App. 4th 1108, 1117, 57 Cal. Rptr. 2d 207 (1996). CFP
 9 provided the servers for the alleged defamatory content, without participating in the
 10 development of the content itself in any way. This does not amount to actual
 11 malice.

12 For these reasons, the Court **GRANTS** CFP’s Special Motion to Strike
 13 Plaintiff’s Complaint in its entirety, and enters judgment in favor of CFP and against
 14 Plaintiff. CFP is the prevailing party for purposes of recovering its attorneys’ fees
 15 and costs, pursuant to California Code of Civil Procedure Section 425.16(c).

16
 17 IT IS SO ORDERED.

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 19 DATED: _____

 20 Hon. Dolly M. Gee
 21 United States District Court Judge
 22 For the Central District of California
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